IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

RSA.No.268 of 1994

DATE OF ORDER:

State of Punjab

...Petitioner(s)

Versus

Sucha Singh and Others

....Respondent(s)

CORUM : HON'BLE MR. JUSTICE M.M. AGGARWAL

.*.*.*.

Present: Mr. Satish Bhanot, Sr. DAG, Punjab.
Mr. G.S. Mann, Advocate and
Mr. Kamaldeep Sidhu, Advocate.

M.M. AGGARWAL,J

This is regular second appeal. The law point involved is whether Article 311(2)(b) of the Constitution had been applied in good faith or regular inquiry was necessary.

Sucha Singh, Iqbal Singh and Rajbir Singh, who were working as Constables in the police department had filed separate suits challenging order dated 2.1.1985 of SSP, Amritsar dismissing them from service and then also order of D.I.G, Jalandhar Range dated 20.9.1986 whereby departmental appeal had been rejected.

The suits filed by them were dismissed by the Sub Judge, Ist Class, Amritsar vide one common judgment dated 4.4.1990. However, on appeal having been filed, the same was accepted by the Additional District Judge, Amritsar vide judgment dated 14.8.1993.

This is an appeal by the State of Punjab against that judgment. The facts of the case are that all these three respondents were working in the police department. Vide order dated 2.1.1985, they were dismissed from service by the SSP, Amritsar without holding inquiry by invoking the provisions of Article 311 (2)(b). According to that order dated 3.1.1985, they had been detailed for protection/guard duty on Punjab Roadways Bus No.PJE/9920 loaded with passengers from Amritsar to Chogewan on 2.1.1985 to extend protection to the passengers and the crew of the Bus. Then these officials-respondents in drunken condition, threatened the passengers and the crew of bus and also preached in favour of late Jarnail Singh Bhindranwala. One of them opened fire to create panic. Then they were taken for medical examination in the hospital and while in police custody they created terror amongst the public at large. Their activities are prejudicial to the maintenance of public order.

In the facts and circumstances, SSP, Amritsar felt satisfied that regular departmental inquiry as laid down in PPR 16.24 was not practicable because the witnesses were not likely to depose against them due to fear of injury to them, more particularly when they have exposed themselves to be the followers of Jarnail Singh Bhindrawala. Thereafter, SSP, Amritsar had considered the length of service and right of pension and then had invoked Article 311(2)(b) of the Constitution of India and while exercising the powers under 16.1 read with Section 7 of Punjab Police Rules and had

dismissed them from service.

It comes out that plaintiffs, now respondents had filed an departmental appeal, which was dismissed by DIG, Jalandhar Range vide order dated 20.9.1986. In this order again, details had been mentioned and DIG agreed with order of SSP, Amritsar dispensing with the inquiry and then passed order.

Additional District Judge had accepted the appeal on the ground that an FIR had been registered against these persons and in that they were acquitted by the criminal Court and that order dismissing them from service was passed on the very next day of occurrence and no reason had been mentioned for dispensing with the departmental inquiry. It had found that there was no evidence before the SSP, Amritsar to come to the conclusion that activities of the plaintiffs were prejudicial to the maintenance of public order.

Counsel for the appellants had relied on a Writ Petition bearing CWP No.10842 of 1992 passed by this Court on 2.11.1995 and a judgment of Hon'ble Supreme Court reported in Chief Security Officer & Others v. Singasan Rabi Das, 1991(2) SLR 140. I have gone through these judgments.

In the year 1985, the terrorism was at peak in Punjab. Plaintiffs, now respondents were members of the police force, which is a disciplined force and was to protect people from the threat of terrorism . They were detailed for protection of the passengers of a bus but in druken condition they threatened the passengers and the crew of bus and also preached in favour of late Jarnail Singh Bhindrawala and then opened fire. Even whey they were taken for medical examination, they had created terror

amongst the public at large and therefore SSP had found the activities of the respondents prejudicial to the maintenance of public order.

In the days of terrorism, which was there in the year 1984-85 in the State of Punjab, no witness would have come forward if regular inquiry had been held. If under those circumstances, SSP, Amritsar had dispensed with the regular inquiry and invoked the provisions of Article 311 (2)(b), then the action of SSP, Amritsar would be justified. Even departmental appeal filed had been dismissed again vide detailed order passed by DIG, Jalandhar Range.

The fact that plaintiffs, now respondents had been acquitted in the criminal case would itself show that the witnesses might not have supported that case. If the order was passed on the very next day of the occurrence, no exception can be taken as it would be necessary in the prevailing law and order situation in those days to make the police force behave in proper manner so that they could fight terrorism and would not be in favour of anybody, who was supporting that terrorism and situation prevailing in those days.

From the above discussion, there is merit in the appeal and the same is accepted. Suit of the plaintiff, now respondents shall stand dismissed. No order as to costs.

February , 2007 (M.M. AGGARWAL)
manoj JUDGE